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CASE FILED
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

KIMBERLEY SMITH, MICHAEL B.
HINCKLEY, JACQUELINE T. HLADUN,
MARILYN J. CRAIG, JEFFERY P.
CLEVINGER, and TIMOTHY C.
KAUFMANN, individually and on behalf of
those similarly situated,

Plaintiffs,

vs.

MICRON ELECTRONICS, INC., a
Minnesota corporation,

Defendant.

) Case No. CIV 01-0244-S-BLW

) **AFFIDAVIT OF TERESA A. HILL IN**
) **SUPPORT OF DEFENDANT'S MOTION**
) **TO STRIKE PORTIONS OF**
) **AFFIDAVITS FILED IN SUPPORT OF**
) **CONDITIONAL CERTIFICATION**

**AFFIDAVIT OF TERESA A. HILL IN SUPPORT OF DEFENDANT'S MOTION TO
STRIKE PORTIONS OF AFFIDAVITS FILED IN SUPPORT OF CONDITIONAL
CERTIFICATION - 1**

Boise-145031.1 0026493-00046

ORIGINAL 107

STATE OF IDAHO)
) ss.
County of Ada)

I, Teresa A. Hill, being duly sworn, depose and say:

1. I am an attorney at Stool Rives LLP and counsel of record for Defendant Micron Electronics, Inc. I am familiar with this case and make this affidavit based on my personal knowledge. I submit this affidavit in support of Defendant's Memorandum in Support of Motion to Strike Portions of Affidavits Filed in Support of Conditional Certification.

2. Attached as Exhibit A is a true and correct copy of an excerpt of the deposition testimony of Laura Anderson taken on March 21, 2002, including pages 38-42; 50-53; 56-58.

3. Attached as Exhibit B is a true and correct copy of an excerpt of the deposition testimony of Alan Garcia taken on July 12, 2002, including pages 64-68.

4. Attached as Exhibit C is a true and correct copy of an excerpt of the deposition testimony of Deborah Monahan taken on March 21, 2002, including pages 41-47; 52-54.

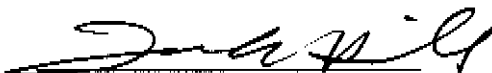
5. Attached as Exhibit D is a true and correct copy of an excerpt of the deposition testimony of Tracy Scott Wells taken on August 9, 2002, including pages 174-182; 288-291.

FURTHER YOUR AFFIANT SAITH NOT.


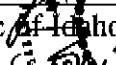
**AFFIDAVIT OF TERESA A. HILL IN SUPPORT OF DEFENDANT'S MOTION TO
STRIKE PORTIONS OF AFFIDAVITS FILED IN SUPPORT OF CONDITIONAL
CERTIFICATION - 2**

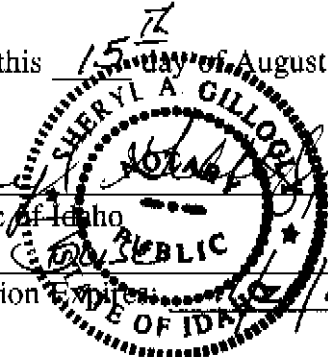
Boise-145031.1 0026493-00046

DATED this 15th day of August, 2002.

By: 
Teresa A. Hill

SUBSCRIBED AND SWORN TO BEFORE ME this 15th day of August, 2002.


Notary Public of Idaho
Residing at: 
My Commission Expires 12/04



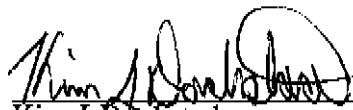
**AFFIDAVIT OF TERESA A. HILL IN SUPPORT OF DEFENDANT'S MOTION TO
STRIKE PORTIONS OF AFFIDAVITS FILED IN SUPPORT OF CONDITIONAL
CERTIFICATION - 3**

Boise-145031.1 0026493-00046

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of August, 2002, a true and correct copy of the foregoing **AFFIDAVIT OF TERESA A. HILL IN SUPPORT OF DEFENDANT'S MOTION TO STRIKE AFFIDAVITS FILED BY PLAINTIFFS** as served on the following individuals by the manner indicated:

William H. Thomas	<input type="checkbox"/>	By U.S. Mail
Daniel E. Williams	<input checked="" type="checkbox"/>	By Hand Delivery
HUNTLEY, PARK, THOMAS,	<input type="checkbox"/>	By Facsimile
BURKETT, OLSEN & WILLIAMS	<input type="checkbox"/>	By Overnight Delivery
250 S. Fifth Street		
Suite 660		
Boise, Idaho 83701-2188		



Kim J Dockstader

AFFIDAVIT OF TERESA A. HILL IN SUPPORT OF DEFENDANT'S MOTION TO STRIKE PORTIONS OF AFFIDAVITS FILED IN SUPPORT OF CONDITIONAL CERTIFICATION - 4

EXHIBIT A

Copy

In the United States District Court
for the District of Idaho

RECEIVED
MAR 25 2002

KIMBERLEY SMITH and MICHAEL B. HINCKLEY,)
individually and on behalf of those similarly)
situated,)

Plaintiffs,)

vs.)

MICRON ELECTRONICS, INC., a Minnesota)
corporation,)

Defendant.)

Case No.
CIV 01-0244-S-BLW



DEPOSITION OF LAURA H. ANDERSON

March 21, 2002

Reported by
Kimberly R. Saunders, RPR
CSR No. 703

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1 A. Yes.

2 Q. And you're not sure whether you got paid
3 for the overtime that you submitted?

4 A. Not sure.

5 Q. Okay. Did you ever write down
6 separately, before you submitted your time, the
7 hours that you were submitting and then check that
8 against your --

9 A. No, I did not.

10 Q. There wasn't anything preventing you
11 from doing that. Is that correct?

12 A. I suppose.

13 Q. Let's go back to the conversation you
14 were telling me about with Mr. Brandon. You went
15 to him with your concerns about your hourly pay.
16 I'm trying to get more of a sense of what exactly
17 the two of you talked about.

18 A. I cannot exactly remember. We talked
19 about a lot of things in different discussions at
20 different times.

21 Q. With regard to some of your concerns
22 about your paystubs, do you remember any particular
23 responses that he gave you in those issues that you
24 raised?

25 A. I just remember him telling me to submit

1 the timecard, and, you know, we were told we needed
2 to do get the job done and get those configurations
3 done and do what it took to do it. But when it
4 came to submitting the timecard, it was supposed to
5 be 8 to 5 or 9 to 6 or whatever your schedule was.

6 Q. But on the occasions when you did submit
7 overtime, were you ever reprimanded by Mr. Brandon
8 or Mr. Church for turning in overtime hours?

9 A. It was discouraged.

10 Q. But specifically did either of them ever
11 come to you and say, you know, don't turn in
12 overtime hours or you turned in too many overtime
13 hours?

14 A. I don't recall.

15 Q. When you say it was discouraged, is that
16 for your whole team it was discouraged, or was that
17 just for you?

18 A. That was for the whole team, every group
19 within commercial.

20 MR. HUNTLEY: Can we take five?

21 MR. TOLLEFSON: You bet. Let's go off the
22 record.

23 (Recess taken.)

24 Q. BY MR. TOLLEFSON: Back to the
25 conversation with Mr. Brandon. You said there were

1 several conversations or many conversations?

2 A. About different things.

3 Q. And in any of your conversations with
4 Mr. Brandon, did you ever expressly tell him that
5 you were working hours that you were not submitting
6 or recording?

7 A. I don't exactly remember what I said in
8 those conversations, but it was something to that
9 effect.

10 Q. To the effect that you weren't
11 submitting all of the hours that you were working?

12 A. That I was working through some lunches
13 and later sometimes.

14 Q. That you were working through some
15 lunches and working later, but did you ever
16 explicitly tell him that you weren't writing down
17 all the lunches or the late hours you were working?

18 A. We discussed the hours that we were to
19 work, but I was to record the hours of my schedule.

20 Q. By your schedule, do you mean your
21 assigned shift?

22 A. My assigned shift. I believe it was 9
23 to 6 or 8 to 5, something like that.

24 Q. Did Mr. Brandon tell you not to write
25 down all the hours that you were working?

1 A. No, I don't believe so.

2 Q. I'm still a little bit unsure. And I
3 realize these conversations were several years ago
4 or a year ago.

5 A. That's correct.

6 Q. Did you ever expressly tell him that
7 there were hours -- working through lunches and
8 working past your assigned shifts that you were
9 working past those -- that you were working those
10 hours, but you were not recording that time?

11 A. He was aware that I was working those
12 hours because I was sitting in the chair when he
13 left. And he was aware of us working overtime, and
14 we did discuss hours. I believe some people were
15 getting inaccurate statements.

16 MR. TOLLEFSON: Would you go back and read my
17 question again.

18 (Record read.)

19 Q. BY MR. TOLLEFSON: I just wanted to make
20 sure we get this -- and I've got the answer that
21 you just gave, but I'm not sure that they were
22 responsive to the question I was trying to ask.
23 Were you aware -- strike that.

24 Did you ever tell him that because you
25 were working through your lunches and working past

1 your shift that you were not recording all of that
2 time?

3 A. I don't recall exactly.

4 Q. You said some people were getting
5 inaccurate statements. What did you mean by that?

6 A. I believe that there were a couple of
7 people that seemed -- they also were feeling like
8 they didn't receive the hours of pay on their
9 checks which they were recording.

10 Q. Okay. So that's a different issue then.
11 It's not that they were recording the time that
12 they were working, but they felt that they weren't
13 getting paid for all the time they were submitting?

14 A. I'm confused by your question.

15 Q. Okay. When I say recording, I'm using
16 that to mean time that you have submitted to the
17 company as time that you worked. Do you understand
18 that?

19 A. I understand that I submitted time that
20 I've worked and that we were not to work overtime.
21 So I was confused as to --

22 Q. You're telling me that you did submit
23 your time, and you did submit some overtime, but
24 not all the overtime that you worked. Is that
25 correct?

1 Unauthorized overtime is expressly prohibited."

2 Do you see that?

3 A. Yeah.

4 Q. When you did -- you told me you did
5 record some overtime. When you recorded that, did
6 you have to get prior approval first, or could you
7 just record it and submit it?

8 A. We were required to get approval for
9 time submitted, and we didn't always record all of
10 that time.

11 Q. Right. I'm sorry. For the time when
12 you did submit overtime, were there some occasions
13 where you did submit overtime without getting prior
14 approval from the manager?

15 A. I don't remember.

16 Q. Okay. Do you remember ever asking
17 Mr. Church or Mr. Brandon whether you could work
18 some overtime?

19 A. I don't remember ever asking.

20 Q. Okay. With regards to Mr. Brandon --
21 and maybe I asked you this before, but I want to
22 make sure I'm clear -- did he ever come to you and
23 reprimand you or discipline you in any way for
24 saying you reported too much overtime?

25 A. I believe it was stated that we were

1 just to turn in our timecard that we had of our
2 shift. And it was on one hand discouraged, and on
3 the other if we didn't get our job done we were
4 reprimanded.

5 Q. But my question is specifically with
6 regards to Mr. Brandon or Mr. Church, did they ever
7 come to you and say something to the effect of,
8 Laura, you're recording too much overtime, or you
9 shouldn't be recording any overtime on the
10 occasions when you did submit overtime?

11 A. I believe on one occasion I remember a
12 statement about something to that effect.

13 Q. By whom?

14 A. By Greg Brandon.

15 Q. To the effect that you had submitted too
16 much overtime, or do you remember?

17 A. No, just to the effect of, remember, you
18 know, just work your hours, and I really don't want
19 you guys to work overtime, but then you have to get
20 the job done. I mean, something to that effect.

21 Q. Did Mr. Brandon ever tell you -- did
22 Mr. Church ever tell you not to write down all the
23 time that you had worked?

24 A. Not that I remember.

25 Q. And Mr. Brandon didn't tell you that

1 either?

2 A. I am not sure about that.

3 Q. Do you remember any specific occasion
4 where Mr. Brandon told you or anyone on your team
5 not to submit all of the hours that you were
6 working?

7 A. I don't remember any specific occasion.

8 Q. Because you were telling me that you
9 felt there was pressure not to record all the time
10 that you were working because you felt pressure
11 from him to get all of your job done; you didn't
12 think you could get it done in your scheduled
13 shift. Is that accurate?

14 A. I remember a discussion with Jay Ellis
15 speaking to someone about -- or speaking to me
16 about someone putting in some good long hours to
17 get the job done. That, I remember.

18 Q. Was Jay Ellis another inside sales
19 representative, or was he a supervisor?

20 A. He was a supervisor.

21 Q. And, I'm sorry, I didn't understand. He
22 was telling you about someone that put in a lot of
23 hours to get their job done?

24 A. That if you wanted to succeed you needed
25 to put in long hours and work -- finish your

1 configurations. It's not possible when you're on
2 the phone and you're in the middle of a
3 configuration to drop everything and clock out.

4 Q. During that conversation, did Mr. Church
5 say anything about not recording the long hours?

6 A. Are you talking about Mr. Ellis?

7 Q. I'm sorry. Thank you. Did Mr. Ellis
8 say anything about not recording or submitting the
9 long hours that you sometimes worked?

10 A. No, he didn't. He wasn't my manager, my
11 direct manager.

12 Q. So he was just saying generally that in
13 his opinion to be successful you needed to put in
14 long hours. Is that --

15 A. Something to that effect.

16 Q. You told me a little while ago that you
17 believed Mr. Brandon was aware of the hours you
18 were working because he would see you at your desk
19 when he left?

20 A. Yes. There were occasions when he
21 taught skiing for kids outside of work and would
22 leave, and I was at my desk working as he left.

23 Q. But you don't know whether or not on
24 those occasions you did submit that time as
25 overtime?

1 were talking about earlier, how does he know that
2 that means that you were working overtime?

3 A. Because I'm still there.

4 Q. What if you had -- he doesn't know, does
5 he, whether or not you had taken a longer lunch
6 during the day or you took some sort of personal
7 break during the day?

8 A. When I'm on the phone in the middle of a
9 configuration with Matell, he knows I'm working.

10 Q. What I'm saying is if you had taken some
11 other leave from work or took a lunch break during
12 the day that went more than an hour or something he
13 might not know whether or not you were working more
14 than eight hours in that particular day.

15 A. We notified him when we had to leave
16 early or anything out of the ordinary.

17 Q. Did you notify him -- did you have to
18 notify him if you wanted to leave the site for
19 lunch?

20 A. Not necessarily.

21 Q. Okay.

22 A. Can I add to that?

23 Q. Sure.

24 A. We knew that we were having a meeting
25 off site or were expected to be somewhere that we

1 would communicate that to him, but he didn't always
2 know.

3 Q. From the time when you became a
4 full-time, regular employee of Micron Electronics,
5 did you work at the Meridian facility for that
6 entire period?

7 A. Micron Electronics.com in Meridian.

8 Q. -And I want to talk to you a little bit
9 about kind of your typical routines and daily
10 workdays when you were at Micron PC. You said you
11 couldn't remember if your shift was 8 to 5 or 9
12 to 6?

13 A. I believe my shift was 9 to 6.

14 Q. Do you think that -- did it stay that
15 same shift from October through August of 2000?

16 A. I don't remember exactly.

17 Q. Did you have a typical time that you
18 would arrive at work, or did that vary?

19 A. It was approximately be there at nine,
20 you know, when the shift started, whenever the
21 shift started approximately.

22 Q. Did you ever perform work for Micron PC
23 at any other location besides the Meridian
24 facility?

25 A. We had meetings off site and tours, you

1 know, of other facilities, like the hosting company
2 and things like that. We didn't clock out.

3 Q. Right. Aside from those types of
4 meetings and tours and things like that, did you
5 perform work at any other location?

6 A. Not directly that I'm aware of. I mean,
7 just in the call center.

8 Q. You didn't do any work at home?

9 A. I don't remember doing -- I don't
10 remember doing any.

11 Q. Because you couldn't -- what were some
12 of the essential tools that you needed to do your
13 job besides the phone?

14 A. Computer, paper, pen, the Oracle
15 software, you know, database. Is that what you're
16 asking?

17 Q. Yes. Anything else that you can
18 remember, manuals of any kind that you needed to
19 use?

20 A. I'm sure there were. I don't remember
21 offhand. It was a long time ago.

22 Q. And did you work in -- do you know what
23 I mean by building one or building two?

24 A. I worked in the commercial building,
25 whichever building that was, across from the

EXHIBIT B

Copy

In the United States District Court
for the District of Idaho

KIMBERLEY SMITH and MICHAEL B. HINCKLEY,)
JACQUELINE T. HLADIN, MARILYN J. CRAIG,)
JEFFERY P. CLEVENGER, and TIMOTHY C.)
KAUFMANN, individually and on behalf of)
those similarly situated,)

Plaintiffs,)

vs.)

MICRON ELECTRONICS, INC., a Minnesota)
corporation,)

Defendant.)

Case No.
CIV 01-0244-S-BLW

DEPOSITION OF ALAN C. GARCIA

July 12, 2002

Reported by
Kimberly R. Saunders, RPR
CSR No. 703

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1 were either traveling on business trips or working
2 at these remote locations?

3 A. Yes.

4 Q. Did you accurately record your time
5 while you were working in the Boise Eagle Flight
6 Way facility?

7 A. Yes.

8 Q. So at what point -- you said that you
9 did not comply with paragraph F of the policy on
10 Exhibit *-017. At what point did you work "off the
11 clock"?

12 A. At the times that I worked from home or
13 after hours while traveling.

14 Q. The times -- you said you didn't work at
15 home from May of 2000 to January 2001. Is that
16 correct?

17 A. Right.

18 Q. But you did work at home while you were
19 working for Mr. McCauley. Is that correct?

20 A. That is correct.

21 Q. I thought you told me that you did
22 accurately record your time while you were working
23 for Mr. McCauley when you worked at home?

24 A. I don't understand the question.

25 Q. Sure. I asked you "Did you accurately

1 record the time that you spent working at home
2 while you were working for Mr. McCauley?" and your
3 answer was "Yes."

4 A. That's right.

5 Q. So I was trying to find out the time
6 when you worked at home that you didn't -- those
7 occasions when you worked at home and did not
8 accurately record your time, what date range are we
9 talking about?

10 A. May I take a moment and clarify?

11 Q. Sure.

12 A. My consideration of "off the clock," in
13 my terms, my understanding was that working at home
14 was "off the clock" time. Regardless of that, I
15 still logged that in my timesheet.

16 Q. And when I'm talking about accurately
17 recording your time, I'm talking about time that
18 you recorded either in the VAX or the me@micron
19 system in order to be paid. Is that your
20 understanding of what we've been talking about?

21 A. Right.

22 Q. So if I understand your last answer
23 correctly -- let me ask you a question this way:
24 Is there any time that you worked -- whether at
25 home, on a business trip, or any Micron facility,

1 or a customer's facility -- where you did not
2 record and get paid for the time that you worked?

3 A. I'm not certain.

4 Q. Can you elaborate on your answer a
5 little bit more?

6 A. Yes. There is no time that I worked
7 which was not recorded.

8 Q. Okay.

9 A. What I was paid, I'm not certain.

10 Q. Okay. So all of the occasions that you
11 worked at home, you accurately recorded those hours
12 on your timesheet?

13 A. Yes.

14 Q. All of the occasions that you were
15 traveling for business or working at remote
16 locations, you accurately recorded those hours on
17 your timesheet?

18 A. Yes.

19 Q. All of the occasions that you worked in
20 the Meridian facility, you accurately recorded
21 those hours on your timesheet?

22 A. Yes.

23 Q. All of the occasions that you worked in
24 the Boise Eagle Flight Way facility, you accurately
25 recorded those hours on your timesheet?

1 A. Yes.

2 Q. And you said earlier that what you were
3 paid you're not certain. What did you mean by
4 that?

5 A. To clarify that statement, I never took
6 the time to reconcile my hours versus the dollars
7 paid by paycheck period, year, etc.

8 Q. Do you have any reason to believe that
9 the time you submitted to your supervisor was ever
10 altered by your supervisor?

11 A. I don't understand the question.

12 Q. Sure. Let me ask you a different
13 question. Do you have any reason to believe that
14 you were not paid for all of the time that you
15 recorded and submitted?

16 A. Yes.

17 Q. And what reasons are those?

18 A. Very simply, many of my pay periods
19 would come with a flat 80 hours on the two-week
20 period, which obviously wouldn't reflect overtime.

21 Q. But you don't -- you said that you never
22 took the time to reconcile the hours that you
23 submitted versus what you were paid. Is that
24 correct?

25 A. That is correct.

1 Q. Have you subsequently done that?

2 A. No.

3 Q. Were there some weeks in which you only
4 worked 40 hours?

5 A. I can't recall.

6 Q. Were you ever advised that no overtime
7 was authorized?

8 MR. THOMAS: Object to the form of the
9 question.

10 THE WITNESS: I don't --

11 Q. BY MR. TOLLEFSON: Sure. Were you ever
12 advised, when you were either a web sales rep or a
13 special programs developer, that you were not
14 authorized to work overtime?

15 MR. THOMAS: Object to the form of the
16 question.

17 THE WITNESS: Yes.

18 Q. BY MR. TOLLEFSON: Who advised you of
19 that?

20 A. I don't recall. I don't recall.

21 Q. But you told me that from '98, from
22 October '98 through January 2001 you always
23 accurately recorded all the time that you worked.
24 Isn't that correct?

25 A. That is correct.

EXHIBIT C

Copy

In the United States District Court
for the District of Idaho

RECEIVED
MAR 25 2002

KIMBERLEY SMITH and MICHAEL B. HINCKLEY,)
individually and on behalf of those similarly)
situated,)

Plaintiffs,)

vs.)

MICRON ELECTRONICS, INC., a Minnesota)
corporation,)

Defendant.)

Case No.

CIV 01-0244-S-BLW



DEPOSITION OF DEBORAH L. MONAHAN

March 21, 2002

Reported by
Kimberly R. Saunders, RPR
CSR No. 703

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1 approval, nonexempt employees are responsible for
2 reviewing their timesheets to verify the accuracy
3 of all time recorded." Do you see that?

4 A. Yes.

5 Q. Do you understand what the term
6 "nonexempt employees" means?

7 A. Yes.

8 Q. And what does that mean?

9 A. Hourly paid.

10 Q. And you also see the last paragraph F
11 where it says, "For additional information contact
12 the payroll department or human resources
13 department"?

14 A. Yes.

15 Q. And back to paragraph C, do you see that
16 it says, "In the event there's an error in the
17 amount paid, nonexempt employees should promptly
18 bring the discrepancy to the attention of their
19 supervisor so that corrections can be made as
20 quickly as possible." Do you see that?

21 A. Yes.

22 Q. Did you ever bring discrepancies of your
23 pay to the attention of your supervisor?

24 A. No.

25 Q. Never?

1 A. No.

2 Q. Okay. And did you accurately record all
3 the time that you worked?

4 A. No.

5 Q. And tell me why you didn't accurately
6 record all the time that you did work?

7 A. Many times I would have my timesheet
8 done for the week, and I would put in extra time
9 and not account for it. And because it was already
10 submitted, there could be no changes made to it.

11 Q. You told me -- back up. You said you
12 had put in extra time after you submitted your
13 timesheet?

14 A. Yes.

15 Q. So at what time on Fridays did you
16 typically submit your timesheet?

17 A. Generally the first thing when I got
18 into work.

19 Q. In the morning on Friday?

20 A. Generally, yes.

21 Q. And why did you submit them in the
22 mornings and not at the end of the day?

23 A. Because there was a deadline that we
24 needed to have them in, and I wanted to make sure I
25 didn't miss the deadline. It was just a routine

1 for me.

2 Q. And what was the deadline?

3 A. I don't remember.

4 Q. Was the deadline sometime on Fridays?

5 A. I don't remember. My guess is yes, but
6 I don't remember.

7 Q. Did you ever do any work on a Saturday?

8 A. Yes.

9 Q. How many times?

10 A. I don't know.

11 Q. Did you -- do you recall if you did any
12 work on a Saturday in the years of '98, '99, or
13 2000?

14 A. I'm sure I did, Saturdays and Sundays.

15 Q. So if you did work on a Saturday, how
16 did you get that time included on your timesheet?

17 A. I believe there was a spot on the
18 timesheet for that.

19 Q. If you clicked -- if we're talking now
20 at the me@micronpc system, if you clicked "submit
21 for approval," could you go -- and that would
22 submit the Monday through Friday time. Is that
23 correct?

24 A. Whatever time you had entered into the
25 system.

1 Q. So did you ever wait and submit your
2 time for approval on a Saturday, Sunday, or Monday?

3 A. I don't recall.

4 Q. And you don't have any recollection of
5 what you believe the deadline was for submission of
6 time?

7 A. No.

8 Q. Do you have any knowledge of when other
9 people on your team submitted their time for
10 approval?

11 A. No.

12 Q. So any overtime that you worked but did
13 not record would have occurred on Friday. Is that
14 accurate?

15 A. Not necessarily.

16 Q. Tell me why that wouldn't be the case.

17 A. Tell you why what wouldn't be the case?

18 Q. Well, you just told me that the reason
19 you had time that was worked but not recorded is
20 because you submitted your timesheets on Friday
21 morning. So if you put in extra time on Friday, it
22 wouldn't be included in your pay. Is that correct?

23 A. I don't know. There would be times
24 when, for me, it might be easier just to put in
25 eight hours a day on my timesheet, but a lot of

1 times I stayed after and finished up on things for
2 my own benefit, to get things done, because I was
3 very busy. So there were times when I worked for
4 the company and didn't record that time. And it
5 doesn't necessarily mean it's on a Friday or a
6 Saturday or a Sunday. It could have been anytime.

7 Q. Okay. And you said that time was for
8 your benefit. What do you mean by that?

9 A. To catch up with what I was doing.

10 Q. Okay.

11 A. Take care of customers, return phone
12 calls, return e-mails, fax information. That was
13 my job. That was my, you know, income.

14 Q. And I'm trying to understand why you
15 didn't record all the time that you worked, aside
16 from the reason you already gave me about you would
17 submit your time Friday mornings. What other
18 reasons did you not record all the time that you
19 worked?

20 A. Sometimes I just didn't, you know, think
21 about it. Like I say, a lot of times when you're
22 in a fast-paced world, you know, it's easier just
23 to say, okay, I worked 40 hours this week even
24 though you may have put in 45 or 50 hours.

25 Q. Any other reasons why you did not record

1 all the time that you worked?

2 A. Not to my knowledge, no.

3 Q. Now, you did record some of the overtime
4 that you worked. Is that correct?

5 A. That's correct.

6 Q. And I'm trying to get a sense of why you
7 recorded some of that overtime, but not all of it.

8 A. Well, my feeling is because some days
9 are more hectic than others so when you have time
10 to stop and think about what you're doing, you do
11 it. If you don't have time and you're in a hurry
12 and you want to get things done and out of the way,
13 you react accordingly.

14 Q. And so does that tie in with what you
15 were telling me earlier about some weeks you
16 wouldn't enter your time for the week until Friday?

17 A. Yes.

18 Q. But you would try to keep some track of
19 it by handwritten notes. Is that accurate?

20 A. Yes.

21 (Exhibit No. *-166 marked.)

22 Q. BY MR. TOLLEFSON: Ms. Monahan, you've
23 been handed what's been marked as Defendant's
24 Exhibit *-166, documents that contain plaintiffs
25 Bates numbers 943 through 957. Are these documents

1 that you produced to your attorneys?

2 A. They look like they are.

3 Q. Let's take a look at the first document,
4 which is Bates number 943. Do you see that?

5 A. Yes.

6 Q. Is that your name at the top?

7 A. Yes.

8 Q. And did you print this document out?

9 A. Yes, I believe so.

10 Q. Can you tell me what is this document?

11 A. It's history of my time.

12 Q. Okay, history of your time. This is
13 time from May 28th of 2000 through June 3rd of
14 2000?

15 A. Yes.

16 Q. And is this what it looks like on your
17 screen when you submit it to your supervisor, or is
18 this how it looks when you pull it up in some other
19 manner? Does that make sense?

20 A. I'm not sure what theirs looks like when
21 they get it. I've never seen it.

22 Q. I'm sorry. What it looks like on your
23 screen.

24 A. You mean before I submit it to the
25 "supe"?

1 you are including overtime hours for Friday. Can
2 you explain that?

3 A. How I'm missing hours?

4 Q. You told me that you were not
5 recording -- you were not recording all the time
6 that you worked in part because you, on some
7 occasions, worked more hours on a Friday but you
8 submitted your time in the morning. Do you
9 remember that?

10 A. Yes.

11 Q. So I'm trying to see why that's the case
12 when we've got Fridays where you did work more than
13 eight hours.

14 A. It could be for a simple reason. It
15 could have been a meeting that day, or we could
16 have been in training that went to that hour of the
17 day. I don't recall.

18 Q. My question is whether or not you were
19 still able to accurately record the time that you
20 worked on Fridays if you always submitted your time
21 -- did you always submit your time on Friday
22 mornings, or did you sometimes submit it at other
23 times?

24 A. No. I probably submitted it at other
25 times.

1 Q. Did you ever submit it on Monday morning
2 for the previous week?

3 A. It's possible, but I'm not 100 percent
4 certain.

5 Q. Do you know whether this particular week
6 we're looking at here, April 2, 2000, through April
7 8, 2000, do you know whether or not you recorded
8 all of the overtime that you worked for that week?

9 A. I would have no idea.

10 Q. Again, if you didn't record all the
11 overtime or all the time that you worked, why would
12 you not have recorded it for that week?

13 A. Simply because it was closed out. Once
14 you submit it, you can't get back in.

15 Q. Did you ever make a request for a
16 timesheet adjustment to your supervisor or to
17 payroll?

18 A. No, I don't believe so.

19 Q. Okay. Did anyone ever tell you not to
20 record all the time that you were working?

21 A. No.

22 Q. I'm handing you a document that's been
23 previously marked as Exhibit *-017 in this case.
24 Again, I'll represent to you this is another policy
25 out of the Micron Electronics Employment Manual.

1 Have you seen this document before?

2 A. No.

3 Q. Do you see at the top under purpose it
4 says "to provide guidelines and conditions
5 applicable to nonexempt hourly employees for
6 overtime scheduling and payment of overtime"?

7 A. Yes.

8 Q. Paragraph A, the last sentence says
9 "some circumstances may require mandatory
10 overtime"?

11 A. Yes.

12 Q. Did you ever have to work mandatory
13 overtime?

14 A. Yes.

15 Q. And when you worked mandatory overtime,
16 did you record all the time that you worked?

17 A. I believe so.

18 Q. Okay. The next paragraph, paragraph B
19 says -- do you see that it says "all overtime work
20 must receive prior approval from the nonexempt
21 employee's supervisor or manager. Unauthorized
22 overtime is expressly prohibited." Do you see
23 that?

24 A. I see that.

25 Q. Did you always have your manager's prior

EXHIBIT D

Copy

In the United States District Court
for the District of Idaho

KIMBERLEY SMITH and MICHAEL B. HINKLEY,)
JACQUELINE T. HLADUN, MARILYN J. CRAIG,)
JEFFERY P. CLEVINGER, and TIMOTHY C.)
KAUFMAN, Individually and on behalf of those)
similarly situated,)

Plaintiffs,)

vs.)

MICRON ELECTRONICS, INC., a Minnesota)
corporation,)

Defendant.)

Case No.

CIV 01-0244-S-BLW



DEPOSITION OF TRACY SCOTT WELLS

August 9, 2002

Reported by
Kimberly R. Saunders, RPR
CSR No. 703

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[1] THE WITNESS: I don't know.

[2] MR. THOMAS: How do you feel about a break?

[3] MR. DOCKSTADER: Sure.

[4] (Recess taken.)

[5] (Exhibit Nos. *202 through *210 marked.)

[6] Q: BY MR. DOCKSTADER: Mr. Wells, you had
[7] indicated something about it was common knowledge
[8] that people were working off the clock. Do you
[9] remember a statement to that effect that you made
[10] before we took a break?

[11] A: Yes.

[12] Q: What did you mean by that?

[13] A: If you want a specific example, one of
[14] the reps — what's his name? I'll think of his
[15] name. I can't think of it right now. But he was a
[16] newer rep. He started — I believe it was summer
[17] of 2000. He was there all the time, all the time.
[18] And he even came in on weekends he told me when we
[19] were selling to businesses. And I said, what are
[20] you doing on weekends? He was going through the
[21] databases finding new prospects in the database.

[22] And then I don't remember exactly how it
[23] came up, but he was telling me, no, I'm just
[24] claiming the 40 hours a week. And I'm saying, you
[25] know, you really can't do that. And he just

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[1] shrugged it off, so I just left it at that. That's
[2] one specific example.

[3] Other examples would be people that
[4] you're seeing there all the time, arriving earlier
[5] yourself, and they're there before you. And you
[6] leave late, and they're still there, and they
[7] worked through their lunch too. And that happening
[8] also when there's a no overtime limitation. That
[9] was commonplace.

[10] Q: Anything else?

[11] A: That's all I can think of to bring out
[12] right now. That's all I can think of.

[13] Q: The new rep that you talked about that
[14] said he was putting 40 hours down even though he
[15] was coming in on the weekends, did you bring that
[16] to the attention of any supervisor?

[17] A: No.

[18] Q: Was there anyone else present when he
[19] told you about that?

[20] A: Not that I remember, no.

[21] Q: To your knowledge, did any supervisor
[22] ever learn that's what he was doing?

[23] A: I don't have specific knowledge of that.

[24] Q: To your knowledge, did anyone other than
[25] you learn of that circumstance?

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[1] A: I didn't talk with anybody else about
[2] it, didn't hear others talk about it. So I don't
[3] know. I guess the only way a supervisor easily
[4] would have known would be if they ever looked at
[5] numbers, the call numbers, the times logging in and
[6] out, the time spent on the phone. And if they ever
[7] had kept records — if you can find them, that
[8] would be very helpful if you looked at the times
[9] people used their pass to get in the building and
[10] used their pass to get out of the building. So,
[11] yes, if you could produce that, that would
[12] certainly corroborate everything.

[13] Q: To your knowledge, did any supervisor,
[14] manager, or anybody in the company know that he was
[15] not recording all of his time?

[16] A: I don't have specific knowledge of that.

[17] Q: To your knowledge, was he told not to
[18] record all of his time?

[19] A: The same as everybody, an e-mail says no
[20] overtime.

[21] Q: Did that say don't record your time?

[22] A: I don't remember the exact wording, but
[23] I doubt that it included that wording.

[24] Q: Do you know if he was not recording all
[25] of his time because of some e-mail that said no

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[1] overtime?

[2] A: That was perhaps his motivation. I
[3] didn't ask him his motivation. We kept it rather
[4] short. I thought I was reporting my overtime. And
[5] that's where — when another person was not
[6] reporting their overtime, it gave them preferential
[7] treatment because they were being more productive
[8] for the same amount of hours or less hours.

[9] Q: Who are you talking about?

[10] A: Let's see here. What is his name? I
[11] keep thinking Jeff. He was a new guy. He was in
[12] his 20s.

[13] Q: What team was he on?

[14] A: He was on Tawni Weaver's team.

[15] Q: Is this the new guy you're talking
[16] about?

[17] A: Yes.

[18] Q: Do you think he was given preferential
[19] treatment for not reporting all of his time?

[20] A: Yes.

[21] Q: In what way?

[22] A: Well, are we including under Gores
[23] Technology?

[24] Q: No. Let me limit what I'm asking you to
[25] the time prior to May 31st of 2001 when the Gores

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[1] transaction took place.

[2] A: So despite the management being
[3] basically the same, we're going to say prior to May
[4] 31st.

[5] Q: We have been limiting our discovery in
[6] this case to that time period before.

[7] A: Okay.

[8] Q: So could I ask you in what way did you
[9] think that Jeff was given favorable treatment for
[10] not recording all of his time prior to that date?

[11] A: It gave him advantages in contests, gave
[12] him advantages in commissions, and it gave him
[13] recognition. He was viewed as being an ideal new
[14] recruit.

[15] Q: How would it give him advantages in
[16] contests?

[17] A: The contest would be based on various
[18] types of production generally. There were many
[19] types of contests. And if you're there for more
[20] hours, then you have more advantage in being able
[21] to win those contests, being able to produce more.

[22] It also — he also had advantages in
[23] being able to gather more accounts than what he
[24] would be if he complied with the hours requirement.
[25] The number of accounts that you would gather, the

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[1] better your prospects for making money.

[2] Q: When you say contests, just so I'm
[3] clear, there weren't contests about the numbers of
[4] hours to work?

[5] A: No.

[6] Q: When you say contests, are you talking
[7] about SPIFFs or other cash giveaways for meeting
[8] certain sales goals or production goals. Is that
[9] right?

[10] A: Yes, sale goals, production goals,
[11] things of that nature.

[12] Q: And how was it that you know Jeff was
[13] advantaged in those types of contests by not
[14] recording his time?

[15] A: Well, because if we were limited on the
[16] number of hours we were supposed to work and you
[17] worked more hours, you're going to have more
[18] production. And also some of the — a lot of the
[19] SPIFFs actually were based upon number of contacts
[20] and phone time.

[21] Q: And how would it — how was it that you
[22] gathered accounts to use your terminology?

[23] A: Okay. Different people would use
[24] different methods. The method that would be common
[25] to all would be incoming phone calls. Another

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[1] method common to all would be telephoning on cold
[2] calls, outbound calls. Methods that some used
[3] would be to watch over people's accounts and find
[4] an opportunity to take that account as their own.

[5] Q: That wasn't very popular, was it?

[6] A: No. Well, it was popular with those who
[7] used it. It was unpopular with those it was used
[8] on.

[9] Q: What other methods of gathering
[10] accounts?

[11] A: Let's see. Looking through the
[12] databases to find accounts that would be
[13] orphaned. I believe that's part of the work Jeff
[14] did on the weekends too. And also supervisors
[15] would distribute accounts. And I don't think — I
[16] don't remember ever getting accounts distributed to
[17] me that way.

[18] Q: In what way?

[19] A: Like when somebody was promoted to a
[20] different position, maybe they went to the
[21] government sales or they went to corporate sales or
[22] if they just promoted out of the company, out
[23] placement program, for whatever reason, their
[24] accounts would be divided. But I don't recall ever
[25] getting any of those until Tawni Weaver was my

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[1] supervisor.

[2] Q: Did Jeff get those because he didn't
[3] record his time?

[4] A: I think Tawni actually split them up
[5] relatively equally from what I could tell. Under
[6] Tony Robinson, the supervisor distributed accounts,
[7] but also accounts were — when a rep was departing,
[8] sometimes they would go to their buddy and say
[9] here's your accounts too.

[10] Q: But when you were saying that Jeff was
[11] advantaged because he didn't record his time in
[12] gathering accounts, I'm just trying to understand
[13] how he was advantaged in that respect?

[14] A: When he would come in on the weekends or
[15] early or whatever, or go through the databases to
[16] find orphan accounts, he has something more
[17] substantial to work with when he's on the clock.
[18] When he has — I don't know if he, in fact, tracked
[19] over people's existing accounts before they were
[20] orphans in order to pounce on them like some did,
[21] but —

[22] Q: Sounds like a pretty competitive
[23] environment?

[24] A: Sure, it's competitive. It's sales.
[25] Sales should be competitive. And I don't know if

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[1] he pursued those ones. But if he did, he had
[2] certainly a great advantage there because you're
[3] still expected to have a certain number of hours of
[4] call time and a certain number of outbound calls.
[5] And if you're going to be looking through the
[6] databases to find these accounts that you can
[7] snatch up, you're not going to be likely to hit
[8] those numbers.

[9] Q: Could Jeff have recorded that time that
[10] he worked on the weekends or in excess of 40 hours?

[11] MR. THOMAS: Object to the form of the
[12] question.

[13] THE WITNESS: When we had limited overtime or
[14] no overtime restrictions, he couldn't have recorded
[15] that, to my knowledge, without repercussions.

[16] So being a dedicated salesman and
[17] wanting to make the buck and doing what he could,
[18] he took the opportunity as any good salesman would
[19] to do what's going to make him most productive.
[20] And he had the time on his hands to do it, single
[21] guy, etc.

[22] Q: BY MR. DOCKSTADER: So his supervisor
[23] would have penalized him if he had recorded that
[24] time when there were restrictions on no overtime?

[25] A: When there were restrictions on

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[1] overtime, if he had recorded the number of hours he
[2] had worked, he certainly would have been
[3] reprimanded in some form or another.

[4] Q: How do you know that?

[5] A: Well, if they're saying no overtime,
[6] that means you're not going to record overtime. If
[7] you do record overtime, then you're going against
[8] their directive to not record overtime — you know,
[9] whether you take that to mean "don't work overtime"
[10] or whether you take that to mean "you just aren't
[11] going to be reporting any overtime." And we were
[12] trying to make our numbers for the quarter.

[13] Q: There was never a time when you were
[14] aware of that Jeff was told not to record his
[15] overtime. Correct?

[16] A: Not that I'm aware of, no.

[17] Q: There were times when overtime was
[18] restricted in that you were told not to work
[19] overtime. Is that what you're saying?

[20] A: Pardon me?

[21] Q: There were times when you were told not
[22] work overtime?

[23] A: Oh, yes.

[24] Q: When did those times occur?

[25] A: The wording, you know, is — the wording

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[1] may have varied. It may have been we are not
[2] recording overtime, or it may have been we're not
[3] working overtime, or it may have been something to
[4] that nature in e-mails generally. And there would
[5] be conversation also in the meetings, you know,
[6] whether it's a weekly staff meeting for the team or
[7] otherwise.

[8] Q: The policy was, as you had indicated
[9] before and as we noted before, that if you were
[10] going to work overtime you needed to get approval.
[11] Right?

[12] A: Yeah, that's the written policy.

[13] Q: Did you ever request overtime or
[14] approval for overtime and have it denied?

[15] A: I never requested overtime.

[16] Q: Never?

[17] A: No.

[18] Q: Do you know whether Jeff ever requested
[19] overtime?

[20] A: I don't know.

[21] Q: Do you know if he ever requested
[22] overtime and was denied?

[23] A: I don't know.

[24] Q: Are you aware of any sales
[25] representative requesting overtime and being

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[1] denied?

[2] A: I'm not aware of that.

[3] Q: Do you remember being told that overtime
[4] should be used for business purposes?

[5] A: Oh, yes, sounds familiar.

[6] Q: In fact, you've probably said something
[7] like that when you were a manager at your other
[8] job. Right?

[9] A: Probably.

[10] Q: Would you have paid your employees in
[11] that job overtime for playing fantasy football,
[12] surfing the Internet, taking three-hour lunches?
[13] Would that be good business practice?

[14] A: They would have been paid for it.

[15] Q: To do those activities?

[16] A: You said taking lunches? Maybe not
[17] that.

[18] Q: Playing fantasy football at work?

[19] A: Oh, sure. If there was a video game
[20] system that you were selling, and, you know, we
[21] didn't have a customer in the store, sure you could
[22] play it.

[23] Q: And you would pay employees for that
[24] time?

[25] A: Yes.

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[1] Q: Did you ever get business cards to hand
[2] out from Mr. Thomas?
[3] A: I don't remember.
[4] Q: Did you ever hand out business cards?
[5] A: Of Mr. Thomas's?
[6] Q: Yes.
[7] A: I don't know. I might have. I think I
[8] did.
[9] Q: Was that at the request of Mr. Thomas?
[10] MR. THOMAS: Object.
[11] THE WITNESS: I had more than one of his
[12] business cards, and I had people that I considered
[13] to be my friends that I would talk with about it.
[14] The one person I couldn't remember his name, why I
[15] stalked with him, he was sitting across the aisle
[16] from somebody else I was talking about.
[17] Q: BY MR. DOCKSTADER: What did Mr. Tom
[18] respond to you about the lawsuit?
[19] A: He didn't seem to take very much
[20] interest. But I don't know whether he pursued it
[21] or not.
[22] Q: What about Ms. Diaz?
[23] A: As far as I knew she had joined into
[24] this before I ever did.
[25] Q: What did she — how did she respond to

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[1] you? What did she say when you talked to her about
[2] the lawsuit?
[3] A: Well, she talked about how she wasn't
[4] claiming any of that overtime she had worked.
[5] Q: Did Mr. Thom respond similarly to you?
[6] A: I don't remember Mr. Thom responding
[7] that way.
[8] Q: What was Jeff's, whatever his name is,
[9] response to you about your discussion of the
[10] lawsuit; do you recall?
[11] A: He didn't seem to take much interest in
[12] it.
[13] Q: Do you remember any conversations with
[14] other sales representatives about the lawsuit other
[15] than the ones you've told me about?
[16] A: Not that I can recall. I guess I should
[17] clarify that. There was at least one more. John
[18] Seal.
[19] Q: John Seal is a friend of yours?
[20] A: Yes.
[21] Q: And what was your conversation with
[22] Mr. Seal about the lawsuit?
[23] A: It would be very much like what I talked
[24] with David Thom.
[25] Q: And how did Mr. Seal respond?

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[1] A: He didn't seem to be all that
[2] interested. I wasn't selling it.
[3] Q: Would that have made a difference if you
[4] were selling it?
[5] A: Certainly. I'm a salesman.
[6] (Exhibit No. *-219 marked.)
[7] THE WITNESS: I guess that was a flip answer.
[8] That last one.
[9] Q: BY MR. DOCKSTADER: What's that, sir?
[10] A: When I said, "Certainly. I'm a
[11] salesman." It probably would have been more
[12] accurate to say I don't know. I'm over building
[13] myself I suppose.
[14] Q: That's fine. Thank you for the
[15] clarification. The exhibit we've marked as *-219
[16] that I've handed to you, do you recognize what that
[17] document — actually it's a collection of
[18] documents. Do you recognize what that is?
[19] A: It looks like a collection of e-mails
[20] that I forwarded home.
[21] Q: It's actually a zip file. Correct?
[22] A: Yeah. Some of these don't look like
[23] they went to my home. I don't know.
[24] Q: If you take a look at page 8980, the
[25] very top page of *-219, it is an e-mail from you to

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[1] scottsjob@home.com. Correct?
[2] A: Yes.
[3] Q: And the subject is overtime e-mails.
[4] Correct?
[5] A: Yes.
[6] Q: And it references an attachment
[7] overtime.zip. Correct?
[8] A: Yes.
[9] Q: That would reflect that you created a
[10] zip file with that name overtime.zip. Correct?
[11] A: Yes.
[12] Q: Do you remember creating a zip file with
[13] that name?
[14] A: Yes.
[15] Q: And what was the purpose of creating
[16] that zip file?
[17] A: I searched through my e-mail database
[18] looking for the word "overtime," and I added all of
[19] those to a zip file.
[20] Q: And if you look at the rest of the pages
[21] of Exhibit *-219, are those the e-mails that you
[22] found and compiled as overtime.zip?
[23] A: They may be.
[24] Q: Well, take a minute to look at it and
[25] see if there's any that you think are not part of

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[1] that.

[2] A: (Witness complied.) These are some or
[3] all of the files that you were in there. I don't
[4] know if this is all of them, or if it's some of
[5] them, or there may be some that were not in there.
[6] But it looks like the ones I've looked at all of
[7] them do have the word overtime. I didn't read the
[8] e-mails.

[9] Q: Do you still have that electronic file
[10] entitled overtime.zip?

[11] A: I probably do.

[12] Q: And it's probably on the CD ROMs that
[13] you've turned over as well. Isn't that right?

[14] A: Probably so.

[15] Q: So if we were to compare to Exhibit
[16] *219 with the electronic file we would be able to
[17] tell whether it included all of them or not.
[18] Right?

[19] A: Yes.

[20] Q: In fact, some of the e-mails that are in
[21] the zip file *219 we've already talked about and
[22] marked as separate exhibits. Right?

[23] A: Yes.

[24] Q: Tawni Weaver never reprimanded you for
[25] recording too much overtime, did she?

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[1] A: I don't think so.

[2] Q: Dan Robinson never reprimanded you for
[3] recording too much overtime?

[4] A: I don't know a Dan Robinson.

[5] Q: Excuse me. Tony Robinson.

[6] A: I don't think so.

[7] Q: And Dominic Casey never reprimanded you
[8] for recording too much overtime?

[9] A: No, I don't think so.

[10] Q: And David McCaulley never reprimanded you
[11] for recording too much overtime?

[12] A: No.

[13] Q: In fact, there was never a supervisor or
[14] manager that reprimanded you for recording too much
[15] overtime. Isn't that right?

[16] A: Not that I can recall.

[17] Q: Are you aware of any sales
[18] representatives who worked a lot of overtime and
[19] recorded it who were promoted into management
[20] positions?

[21] A: Representatives who did what?

[22] Q: Who worked a lot of overtime, recorded
[23] it, and were promoted into management positions?

[24] A: I don't know.

[25] Q: Would it surprise you that there were a

[1] lot of represents who did that, who did get
[2] promotions into management?

[3] A: No.

[4] MR. THOMAS: Object to the form of the
[5] question.

[6] Q: BY MR. DOCKSTADER: Who do you think has
[7] testimony that's favorable to your position in this
[8] lawsuit?

[9] MR. THOMAS: Object to the form of the
[10] question.

[11] THE WITNESS: I don't understand the question.

[12] Q: BY MR. DOCKSTADER: Do you think there's
[13] anyone who has testimony that's favorable to the
[14] position that you want to assert in this lawsuit?

[15] A: If I understand the question, yes.

[16] Q: Who?

[17] A: Patty Diaz.

[18] Q: Who else?

[19] A: Jeff.

[20] Q: The Jeff we've been talking about today?

[21] A: That's right. I know I have his name at
[22] home. I just can't remember it right now. It's
[23] probably because I'm on the spot.

[24] Q: Anyone else?

[25] A: Well, you would have other people

[1] that —

[2] Q: Don't speculate. Anybody that you know
[3] in particular?

[4] A: No.

[5] Q: What testimony or evidence would
[6] Ms. Diaz or Jeff know?

[7] MR. THOMAS: Object to the form of the
[8] question.

[9] Q: BY MR. DOCKSTADER: As far as you know,

[10] A: From my prior conversation with Jeff, he
[11] worked a lot of time off the clock.

[12] Q: And you related earlier that he was
[13] putting down 40 hours you said, but coming in on
[14] weekends and looking up prospects and that sort of
[15] thing. Right?

[16] A: Yes.

[17] Q: Anything else that you're aware of in
[18] terms of testimony or evidence that would support
[19] your position?

[20] A: With Jeff, no.

[21] Q: With regard to Ms. Diaz, what evidence
[22] or testimony would she know?

[23] A: That she worked a lot of time off the
[24] clock.

[25] Q: How do you know that?